

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PRIVATE DETECTIVE AND PROTECTIVE AGENT SERVICES BOARD

In the Matter of the License Application of  
Northern Investigative Services, Inc., Morgan  
J. Austreng, Qualified Representative.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles pursuant to Order for Hearing and Notice Thereof which scheduled a hearing for April 9, 1993 at 9:30 a.m. at the Office of Administrative Hearings at 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Jeffrey F. Lebowski, Special Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Administrative Unit of the Minnesota Private Detective and Protective Agent Services Board (hereinafter also referred to as "the Board").

Morgan J. Austreng, Qualified Representative of Northern Investigative Services, Inc., 109 E. Locust Street, Duluth, Minnesota 55811, appeared on behalf of the Applicant without benefit of counsel.

The record closed on April 19, 1993 upon receipt of reply correspondence from Mr. Lebowski.

This report is a Recommendation, not a final decision. The Minnesota Private Detective and Protective Agent Services Board will make the final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least 10 days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Ms. Marie Ohman, Executive Director, Minnesota Private Detective and Protective Agent Services Board, 1246 University Avenue, St. Paul, Minnesota 55104, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

Whether Northern Investigative Services, Inc.'s application for a corporate private detective license should be approved by the Board.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On December 7, 1992, the Board received an application for a corporate private detective/investigative license from Northern Investigative Services, Inc. along with payment of application fees of \$965.00. The anticipated primary business of the Applicant will be to provide plain clothes security to retail stores for the purpose of shoplifting surveillance. (80% of time). Approximately 20% of the anticipated business would be providing private investigative services for fee. Ex. 2.

2. The application identifies Morgan J. Austreng as the Qualified Representative of Northern Investigative Services, Inc. Mr. Austreng is 25 years of age having a birth date of October 16, 1967. He was born in St. Louis County, Minnesota. Mr. Austreng's home address is at 20 Norwood Avenue, Superior, Wisconsin 54880, Ex. 2.

3 Mr. Austreng served in the United States Army as a military police officer for approximately nine months. He received an honorable discharge after service from February 1991 through November 1991. He attended the Military Police Training Center at Fort McClellan, Alabama for nine weeks in 1991. Ex. 2.

4. From November 1987 to August 1988, Mr. Austreng was employed by Gerald Weeks & Associates, Inc. (a previously licensed private detective agency). Mr. Austreng worked in plain clothes in various retail environments to observe and apprehend shoplifters. Although his employer, Mr. Weeks, had praise for his ability to apprehend shoplifters, Mr. Weeks also indicated that Austreng had disciplinary problems that ultimately lead to his discharge. This previous employer would not recommend licensing. Mr. Austreng was employed approximately 10 months, part-time, averaging 24 to 30 hours per week. Ex. 2; Testimony of Marie Ohman.

5. Mr. Austreng was employed by the J.C. Penney in Duluth from August 1, 1988 to November 1989 (15.5 months of part-time employment) and again on August 15, 1990 to November 26, 1990 (4 months of part-time employment). He averaged approximately 20 hours per week while working for J.C. Penney Company. J.C. Penney Co. employed Mr. Austreng as a Loss Prevention Officer, primarily involved in surveillance observation of shoplifting activity. In addition, in connection with an apprehension he had investigative responsibilities that included interviewing suspects, compiling necessary documentation, reporting to law enforcement regarding arrests, compiling reports, and providing court testimony as needed.

6. While employed at J.C. Penney disciplinary action was taken against

Mr. Austreng for falsification of records. Because of the falsification he was terminated from his employment with J.C. Penney Co. and would not be considered for rehire. Mr. Austreng's supervisor at J.C. Penney, Ms. Yvonne Jardine, recommended against licensing and questioned Mr. Austreng's maturity for becoming a licensee. Ex. 2; Ohman Testimony.

7. Mr. Austreng was employed from March 5, 1992 to October 1, 1992, approximately 7 months of part-time employment averaging 20 hours per week, for Advanced Private Investigations, Inc., a Minnesota-licensed private detective agency. He was employed as a Loss Prevention Investigator, primarily providing surveillance of shoplifting activity. He was assigned by his employer detective agency to three store areas. Mr. Austreng worked in a

plain clothes capacity; he would apprehend suspects and do initial questioning before law enforcement involvement. Mr. Austreng left Advanced Private Investigations, Inc. to take on a job with the Fond du Luth Casino near Duluth. Advanced Private Investigations, Inc. would rehire Mr. Austreng who had no disciplinary problems while working there; however Mr. Paul Shober, the owner of Advanced Private Investigations, Inc. indicated that he would hesitate recommending licensing to Mr. Austreng due to what Mr. Shober feels is a lack of management level experience. Ex. 2; Ohman Testimony.

8. Mr. Austreng has been employed as a Loss Prevention Associate at Sears Roebuck & Company in Duluth from November 15, 1989 to the present time. His term of employment is approximately 3 years 2.5 months, working up to 20 hours per week. Mr. Austreng's primary job function is to observe for potential shoplifting activity through the use of surveillance by closed-circuit cameras. With respect to a shoplifting apprehension, Mr. Austreng may interview the suspect, may take a statement, may talk to witnesses, may prepare a report and obtain various physical evidence, report to law enforcement and provide court testimony as needed. Mr. Austreng's supervisor at Sears, Sherry Swanstrom had supervised Mr. Austreng approximately 3 to 4 months at the time she was interviewed as part of the licensing application. She indicated that Mr. Austreng is even-natured and professional and that during her 3 to 4 months of supervision of Mr. Austreng she has encountered no disciplinary problems. Ms. Swanstrom found Mr. Austreng to be responsible and professional in his appearance and expects that he will continue his employment with Sears. Ex. 2; Ohman Testimony.

9. Mr. Austreng began employment with the Fond du Luth Casino in Duluth as Surveillance Manager on December 28, 1992. Mr. Austreng's job function is to manage the close-circuit camera observation activities to detect problems with employees and/or patrons of the casino. Four employees report to Mr. Austreng. Mr. Austreng is also responsible for conducting on-the-floor activities to more closely observe gaming areas, and any problem matters originally discovered through camera observation. Mr. Austreng has assisted in the development of the casino's surveillance policy and has shown evidence of leadership capabilities during his two months of employment at the casino as surveillance manager. Ex. 2; Ohman Testimony.

10. Mr. Austreng's work experience hours from related employments were

assessed in the following manner:

Employer	Employment	Hours
Gerald Weeks, Inc.		800
J.C. Penney Co.		1,560
Advanced Private Investigations, Inc.		560
Sears Roebuck		3,080
Fond du Luth Casino		320

11. Mr. Austreng's loss prevention experience exceeds 6,000 hours. Not all loss prevention surveillance is considered "investigative" work activity. Only a small part of this occupation is considered "investigative" - that which occurs after a theft is suspected. After a crime is suspected the opportunity for investigative work begins. Such an investigation may include questioning suspects, gathering physical evidence and data, preparing investigative reports and interviewing witnesses. Exs. 2 & 3; Ohman Testimony.

12. Mr. Austreng's experience as a Military Police Officer would not increase his "investigative" experience hours because Mr. Austreng's job functions as a Military Police Officer have not been established in this proceeding.

13. In addition to Mr. Austreng's training as a Military Police Officer, he has received the following training relevant to the application. During Mr. Austreng's employment at Penney's he was involved in criminal justice coursework; he also participated in a loss prevention program at Sears and had on-the-job training at various employers.

14. Gerald Weeks, Inc. and Advanced Private Investigations, Inc. are both potential competitors to the Applicant and have a vested interest in not promoting the application. The Board is aware and sensitive to the circumstances presented by such previous or former employers. The Board is sensitive to the conflict in interest and takes this circumstance into consideration when former employers are in the position to discourage or prevent licensure. Ohman Testimony.

15. The Board considered the application for licensure by Northern Investigative Services, Inc. at a meeting on February 22, 1993. Mr. Austreng was present and responded to questions by the Board. The Board had before it the Applicant Background Memorandum prepared by the Executive Director and Mr. Austreng's responsive letter dated January 28, 1993. The Board determined that the scope of Mr. Austreng's experience, focused primarily on surveillance for loss prevention, was an inadequate background for an investigative license. The Board considered his experience as a supervisor and concluded that it was inadequate for him to serve in the role of a Qualified Representative. Finally, the Board concluded that because of the charge of falsifying documents at the J.C. Penney Co. employment, the Applicant had failed to show that Mr. Austreng had the good character, honesty and integrity required for issuance of the license. Exs. 2 & 3; Testimony of Marie Ohman.

16. At the Board meeting on February 22, 1993, the Applicant was informed that the application was being denied for the reasons being discussed at the meeting. The Board advised the Applicant of the right to a contested case hearing under the Administrative Procedure Act,

17. An Order for Hearing and Notice Thereof was issued on March 4, 1993, and served upon Applicant. The hearing was scheduled for April 9, 1993 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. Ex. 1. A hearing was held as scheduled.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. All relevant, substantive and procedural requirements of law and rule have been fulfilled so as to vest the Private Detective and Protective

Agent Services Board (hereinafter "the Board) and the Administrative Law Judge with jurisdiction in this matter.

2. Minn. Stat. 326.3311 (1992) authorizes the Board to receive, review, approve and deny applications for private detective licenses according to standards and requirements contained in Minn. Stat. 326.32 to 326.339 (1992) and applicable rules, Minn. Rules Pt. 7506 (1992 Supp.)

3. Minn. Stat. 326.3382, subd. 2(b)(4) requires that an applicant for an "investigative" license have a minimum of 6,000 hours of experience in "an occupation that, the Board finds equivalent in scope, responsibility, and training to one of the specific occupations listed". Because the primary responsibility of shoplifting or loss prevention surveillance is the observation of employees or customers to prevent property loss it is not an occupation 100% equivalent in scope to an investigator occupation.

4. Minn. Stat. 326.3381, Subd. 3(3) disqualifies an applicant for licensure if the applicant fails to "demonstrate to the Board good character, honesty, and integrity."

5. Minn. Stat. 326.32, subd. 12 identifies a "Qualified Representative" as the member of a partnership or corporation that meets the qualifications for licensing and requires that the Qualified Representative be capable of supervising and managing the day-to-day operations of the licensed activity.

6. As the Applicant for a license, Northern Investigative Service, Inc., has the burden of proving by a preponderance of the evidence that its Qualified Representative meets the requirement for licensure required by Minn. Stat. 326.32, 326.3381, subd. 3(3) and 326.3382, subd. 2(b)(4).

7. Northern Investigative Services, Inc. has failed to prove by a preponderance of the evidence that its Qualified Representative, Morgan J. Austreng has the background experience as an investigator necessary for issuance of a private detective license; has failed to prove that Morgan J. Austreng possesses good character, honesty, and integrity; and failed to prove by a preponderance of the evidence that Morgan J. Austreng has the background experience for managing and supervising the licensed activity.

8. Northern Investigative Services, Inc. has failed to prove by a preponderance of the evidence that a corporate private detective service should be issued to it.

On the basis of the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Private Detective and Protective Agent Services Board issue an Order denying the application by Northern Investigative Services, Inc. for a license as a corporate private detective agency.

Dated: April 1993.

ALLEN E. GILES  
Administrative Law Judge



# NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (3 cassette tapes)

## MEMORANDUM

Burden of Proof,

Because Northern Investigative Services, Inc. proposes that the Board take action granting it a license Northern Investigative Services "must prove the facts at issue by a preponderance of the evidence". Minn. Rules Pt. 1400.7300, subp. 5; In the Application\_of\_the City of White Bear Lake, 311 Minn. 145, 427 N.W.2d 901 (1976). Northern Investigative Services, Inc. has an affirmative obligation to prove that it is entitled to licensure. The Applicant must affirmatively establish that the falsification of records incident at J.C. Penney is untrue and/or in the alternative an unintentional inadvertent error. The Applicant's evidence on this issue has been limited and unpersuasive. The Applicant must affirmatively establish that the negative recommendation of former employers are unjustified or, as the Applicant claims, made for the purpose of preventing additional competition in the private investigative business. Other than this bare assertion, the Applicant has offered no evidence that supports this claim.

The amount of managerial or supervisory experience required of a Qualified Representative is unclear from the statute. However, it is undisputed that this type of experience is required. Except for Mr. Austreng's recent employment as Surveillance Manager at the Fond du Luth Casino, this record does not affirmatively establish any managerial or supervisory experience. Working approximately two months as a Surveillance Manager does not affirmatively establish a background experience as a supervisor or manager.

The only testimony or evidence offered by the Applicant in this proceeding was generally in response to that presented by the Board. It is not enough to simply respond to the evidence presented by the Board. As the person with the burden of proof in this proceeding, the Applicant has an affirmative obligation to show that it is entitled to the license. Northern Investigative Services, Inc. failed to do this.

Order -for Hearing.

The Order for Hearing was signed by the Executive Director, Ms. Marie Ohman. It is unclear that the Executive Director has the authority to issue the Order for Hearing. Other Boards initiate Chapter 14 contested case proceeding by signature of the Chair or a Board Member signifying a Board action initiating the proceeding. Presumably the Board voted to initiate this hearing proceeding, however, no Board member signed the Order. It is

undisputed that the Board has the authority to initiate this hearing under Chapter 14. It is also undisputed that the Applicant is entitled to a contested case hearing in connection with its application. The Applicant received proper notice, and filed a Notice of Appearance. Thus all preliminary jurisdictional matters are satisfied and there is no question that

the Board has the jurisdiction to act on the Application by issuing an Order in this case. It would be useful in the future to avoid confusion by having a Board Member sign the Order for hearing, or have the Board pass a resolution directing the Executive Director to issue an Order for Hearing.

A.E.G.